G. R. S. 58

Previous references.

cls 314-11-1-2

1912-3

File No. 61-12

Serial Nos. 1 – 3

(Confl –)

Later references.

Cls 172-12-18.
Cls 61-12-8-12
Proc Dep 0071-19
cls. 218-19(1-4)
" 110-23 (1-4)
cls 174-28,1-7
Cls 98-31-3

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. 1 – 3.

Part B. for November 1912

SUBJECT.

Notification under the code of civil Procedure.

Contents.

1. Draws the Dy Secy's. No 4738 S/ 16-8-12 requesting that a copy of the notification to be issued by the Durbar under Sec 29 of the C.P.C may be forwarded to him.

2. To the compiler, Mysore Gazette. No J13188) 16-11-12 Notifies that Summonses issued by any civil or Rev. Court in Mysore or British beyond the limits of Mysore will be established or continued by the authority of the G. Govt

council of State in the territories of any foreign power or state may be served by the courts in Mysore

3 to the President. MS 391 D 27-11-1

Forwards a copy of it.

G.R.S. 11]

1912-13.

GENERAL AND REVENUE SECRETARIAT.

(Courts)

ES

Cts File No. 61-12.

FILE HEADING.

Notifications under the Civil Procedure Code.

From The First Assistant to the Resident

No. 4738 Dated 16.8.12. Received 17.8.12.

Diary No. 466 Enclos. nil. Spare Copies. Serial No. 1.

BRIEF ABSTRACT OF LETTER.

Requests that a copy of the notification to be issued by the Durbar under the Section 29 of the Code of Civil Procedure may be forwarded to the Residency.

1. NOTES AND ORDERS.

Orders of the 1st Councillor in Courts File N 314 of 1911-12 in the matter of the reciprocal Service and execution of Summonses and decrees in British India:-

PJo

NOTES—First Sheet.

GPB—30,000—27-6-11

G. R. S. 12]

General and Revenue Secretariat.

C/s File No. 61 of 1912-13.

Serial No.

These cases have been noted upon in another file dated 5.9.12 submitted with this simultaneously.

2. A notification under Section 29 should I think be issued. Please note all provisions (if there are others under which notifications are due and put them through as early as possible" Intd H.W.N. 27.7.12.

Subd on 4.9.12.

3) "To avoid delay (as a reply to the Residency is due this will be separately dealt with in another file" Intd S.H. 5.9.12

PJ

NOTE--Contn. sheet.

GPB—20,000—20-1-12

General and Revenue Secretariat. | C/ File No. 61 of 1912-13

Serial No.

4 The draft of a notification under sec 29 C.P.C. is put up for approval. The Ch. Comm's notification dated 23rd July 1878 (p. 106 of the Civil Dig.st) lays down that processes of Civil ~~or Revenue~~ Courts in British India may be acted upon and executed by "all Courts" in Mysore. It is not clear whether the expression "Courts" has was intended to include Courts other than 'Civil' Courts also Eg. 'Revenue' Courts. Sec 29 of the New Code gives power to ~~execute~~ notify

NOTE—Contn. sheet.

GPB—65,000—17-6-12.

R. S. 12]

General and Revenue Secretariat. | G- File No. 61 of 1912-13

Serial No.

that processes of civil" or "Revenue" Courts may be executed by ~~Civil~~ "Courts" in Mysore — that is by "Civil" Courts as the C.P.C. primarily applies only to "Civil" Courts. As there have been many instances of processes of revenue Courts in Br. India being sent on to Mysore Courts for execution we may include in the notification the processes of such Courts also. The Br. Govt have given us 'reciprocity' in the matter. Please see Secy's letter No 3175 of 31st May 1912 & enclosure.

Flag S. 8(1).

5 The notification that is now proposed to be issued will not affect

NOTE—Contn. sheet.

GPB—65,000—17-6-12.

General and Revenue Secretariat.

CS File No. 61 of 1912-13.

Serial No.

the validity of the Ch. Com'rs reff of 1878.

6 If the draft is appd for issue, a copy will be sent to Res[t] as desird by them

5/9/12

1st/9

7 The draft will apply to Governor-General's Courts in the Native States also [but not to Ch. St[s]] we have been granted reciprocal Concession

5/9/12

1st/9

744

NOTE—Contn. sheet.

GPB—65,000—17-6-12.

G. R. S. 12]

General and Revenue Secretariat.

C5 File No. 61 of 191 13

Serial No.

8 Please Consult the Ch Ct U.O.

6/9/12

9

Asst Secy B iii

Please put up a brief note (draft) explaining the point on which the opinion of this Chief Court is required.

WJ

7/9/12

Please arrange accordingly

Hag 8c.

Typed draft Note Lab

12/9/12

10

U.O. No 149

6/9/12

Sir,

I am forwarded with compliments by the Registrar of this Chief Court unofficially for favour of placing the opinion of this Hon'ble Judges of this Chief Court on the points explained in the Enclosed note.

I have the honour to be
Sir
Your most obedient servant

12/9/12

12.9.

NOTE—Contn. sheet.

GPB—20,000—26-1-12

NOTE

11

7

Foreign Dept. Notification No.232-i-J dated 25th November 1881.
Foreign Department Notification No.1368-i-dated 29th March 1889

The Government of India have by means of the marginally noted Notifications made arrangements for the service and execution of the summonses and decrees of Civil and Revenue Courts of Mysore

(a) by Courts in British India, and

(b) by Courts established or continued by the authority of the Governor General in Council in the Territories of any Foreign Prince or State.

sl 1 of cts 314-11 flag 5 12

2. In his letter No.3175 dated the 31st May 1912, the First Assistant to the Hon'ble the Resident requested to be furnished with copies of similar Notifications issued by the Durbar for the reciprocal service and execution by the Mysore Courts of the summonses and decrees of the Civil and Revenue Courts of the descriptions (a) and (b) above.

13

3. Our reply to the Residency is embodied in this office letter Pol.No.124 dated the 9th August 1912.

sl 2 of the same file.

It was stated therein that so far as decrees are concerned due provision has been made for their execution by Courts (civil) in Mysore in section 43 of the Code of Civil Procedure 1911.

P.T.O.

14 (4) As regards the service of summonses, section 650 (A) of the old Code of Civil Procedure, enabled the Courts in Mysore to serve the summonses issued by any Civil or Revenue Courts situate beyond the limits of Mysore. In the new Code (Section 29) this power of the courts has been somewhat restricted by the addition of a proviso, which requires an express direction from Government by means of a Notification declaring that the provisions of the said section shall apply to such courts.

15 (5). The point on which the Chief Court's opinion is sought is whether section 157 of the new Code which conserves existing powers of courts or the Chief Commissioner's Notification No. 112 dated the 23rd July 1878, which has not been repealed by any enactment, does not dispense with the necessity of issuing a fresh notification under section 29 of the new Code, or whether it is necessary to issue such Notification with a view to place the matter beyond all doubt. A draft notification also

also

~~also~~ is in the file for consideration.

12/9/12

A.V.

C R. S. 12]

General and Revenue Secretariat.

File No. of 191

Serial No.

ho 1041/78

III
17/9
JW

ds

16 The file is retransmitted with Copies of the Judges' Notes.
Registered
16th Sept 1912. Regr. Chief Ct.
17th "

NOTE—Contn. sheet.

GPB—65,000—17-6-12.

N O T E S.

17 The Chief Judge :- I am of opinion that to establish complete reciprocity between the British courts in India and the courts of the Mysore State in regard to the service of summonses issued by Civil and Revenue courts, a notification such as that proposed to be issued under section 2 of the new Civil Procedure Code, is necessary.

18 The Notification of the Chief Commissioner, No.112 dated the 23rd July 1878, was not, so far as I am aware, issued under Act VIII of 1859 which was then in force. It was a mere executive notification issued with the sanction of the Government of India because it was meant to be binding upon the courts in this State. It is still in force not because it has been kept alive by virtue of any enactment, but because the Government of Mysore have not chosen to repeal it. Section 157 of the new Civil Procedure Code has therefore nothing to do with it.

19 There is apparently no other notification on the subject which could be said to have been kept alive by reason of the operation of the said section. No notification was issued, nor was it necessary to issue any notification, under the old Civil Procedure Code (REGULATION II of 1884), because section 650A of that Code authorised the service by our courts of summonses, issued by all the Civil and Revenue courts outside the territories of Mysore, without requiring that any special notification should be issued in respect of any of such courts. That section having now been repealed, we are left with only the old executive notification of 1878 which, however, is restricted in its operation to the service of summonses issued by Civil Courts in British India. It does not authorise the service of summonses issued by Revenue Courts in British India; nor does it make any provision for the service of summonses issued by the Civil and Revenue courts established by or continued under the authority of the

Governor-General

Governor-General in Council in the territories of any foreign Prince ~~Provinces~~ or State.

20 A doubt is raised in the office note as to whether the expression "Courts in Mysore" in section 29 of the new Civil Procedure Code applies only to Civil courts or applies to Civil and Revenue courts. It is unnecessary for the purposes of the present reference to express an opinion upon this point; but it appears to me that the object of the Legislature was to make it applicable to both these classes of courts.

13th September 1912.

21 Mr Justice K.S. Chandrasekhara Aiyar :- I agree with the Chief Judge (Mr Justice Krishna Rao) as to the necesssity for issuing a separate notification under section 29 of the new Code of Civil Procedure.

22 As regards the terms of the notification, I do not know why it is proposed in the Secretariat draft to restrict the application of the section to summonses issued by certain classes only of Civil and Revenue courts outside of Mysore, namely, courts situated in British India or established in foreign territory by the Governor-General in Council. There was no such restriction in operation under section 650 A of the old Civil Procedure Code, which applied to all (Civil and Revenue) courts situated beyond Mysore limits by whatsoever authority established.

23 I wish in this connection to draw attention to what appears to be a mistake in the drafting of the proviso to section 29. This professes to be based on the proviso to the corresponding British Indian Section. But a comparison of the two will show at once that whereas the expression "such courts" in the British Indian enactment refers to courts outside of British India issuing summonses, the same expression in the Mysore enactment can only refer to courts in Mysore, which have to serve the summonses issued by foreign courts. This is because the intermediate words

in

in the British Indian proviso were omitted from the Mysore ~~court~~ Code without a suitable consequential change in the wording. It is doubtful, at the same time, whether the real object of the proviso was rightly understood by the Mysore Select Committee which recommended its adoption, judging by the following explanation contained in its Report printed at page 76 of Part III of the Mysore Gazette for 22nd September 1910 : " We are of opinion that the power granted by this clause (Clause 29) should not be exercised by the courts of the State without express direction from Government "—— as if the object of the proviso was merely to enable the courts of the State to serve the summonses of foreign courts !

As the proviso stands at present, I very much doubt whether it enables the Mysore Government to make any such discrimination as proposed in the draft Notification, in regard to the character of the foreign courts under contemplation. I would therefore suggest that the Notification to be issued be in general terms.

13th September 1912.

Mr Justice E.H. Wallace :- I agree that a separate notification should be issued. Under section 29, Civil Procedure Code (Regulation III of 1911) the Mysore Government can on the plain reading of that section, only declare in its notification that the provisions of the section shall apply to 'such courts' i.e. the courts in Mysore. I do not think that as the section stands the notification could restrict the scope of the section. The notification must declare generally that section 29 of the Civil Procedure Code shall apply to courts in Mysore, enabling them to serve, as if issued by themselves, "summonses issued by any civil or revenue courts situate beyond the limits of Mysore". I do not think the section gives Government any power to restrict it to "courts situate in British India etc." as the proposed notification runs.

16th September 1912.

15

V/9

The Chief Judge :- Having had the advantage of reading the notes of my learned colleagues, I am of opinion that the notification proposed to be issued should be in general terms as suggested by Mr Justice Chandrasekhara Aiyar.

16th September 1912.

Registrar.

NB.

G R. S. 12]

General and Revenue Secretariat.

CS File No. 61 of 1912/13

Serial No.

27 Subs for orders

Hes 122 19.9.12.

28 The learned judges of the Chief Court seem to be of the opinion that a notification can not be issued under Sec 29 without making it applicable at the same time to "all the Courts outside Mysore."

29 With all respect it appears to me that such a result need not follow. The proviso to the Section should be read along with the substantive provision and not apart from or independently of it.

NOTE—Contn. sheet.

GPB—65,000—17-6-12.

General and Revenue Secretariat. | CS File No. 61 of 1912-13

Serial No.

The Section refers to the Service of "Summonses issued by any Civil or Revenue Court Situate beyond the limits of Mysore" The word ~~Significant~~ "Any" is Significant and is Evidently intended to ~~Refer~~ include both "all" and "Some". Consequently the Govt may declare the provisions of Sec 29 to apply to our Courts either in respect of the Summonses issued by "all" Courts outside Mysore or any particular Court. Of Course, if the proviso is read altogether independently of

NOTE—Contn. sheet.

GPB—20,000—20-1-12

Serial No.

the main Sentence, there will be justification for the inference drawn by the Chief Court Ld Judges of the Chief Court. But I submit that the proviso Shd not be detached from the main Sentence to which it ~~it~~ is a proviso.

30. With refee to the remarks of Mr Justice Chandrasekhara Iyer that it is doubtful, at the Lame time, whether the real object of the proviso was rightly understood by the Mysore Select Committee", it is hardly necessary

GPB—65,000—17-6-12.

to State that the Select Committee ~~was fully aware~~ meant that they have stated in the Report viz "that the power granted by the ~~last~~ clause (Section) should not be Exercised by the Courts of the State without Express direction by Govt" The object of this is that our Courts should not Serve processes issued by any Court outside Mysore without the Govt directing them to do so - the reason being that such matters are ordinarily matters to be arranged

NOTE—Contn. sheet.

R. S. 12]

General and Revenue Secretariat. | C/S File No. 61 of 1912-13

Serial No.

by agreement or treaties between different States and that the Municipal Courts of a State should not Exercise such power unless Specially authorised. It is ~~matter of Com~~ within the ~~Jurisdiction~~. The assumption that the Courts have got an inherent power to serve processes issued Even by foreign Courts does not seem to be justifiable.

31 As regards the alleged "mistake" in drafting Sec 29 of our Code, it is no doubt true

NOTE—Contn. sheet.

GPB—65,000—17-6-12.

Serial No.

that there is a verbal difference between the Bo Indian Code and ours but this makes no diffce in meaning. In neither case can a Court serve the Summonses of a foreign Court without a Special direction by Govt. The antecedent of "such Courts" in the Bo. Indian Code is foreign Courts and that of the same Expression in our Code is Mysore Courts but as already stated the direction will be to Mysore Courts in respect of the

NOTE—Contn. sheet.

General and Revenue Secretariat.

Cls File No. 61 of 1912-13

Serial No.

Summonses of any (in one or all) Civil or Revenue Court outside My Zone. The "provisions of the Section" refd to in the proviso Can only refer to the first Sentence — a fact which seems to have escaped the notice of the Hon'ble Judges. 32 I am therefore now of opinion that the proposed draft may be appd

19/9/12

Had a personal discussion with Sir

976 33 A fair Copy of the Notification as revised by the 1st Cr is put up. This may perhaps

NOTE—Contn. sheet.

GPB—65,000—17-6-12.

(C. R. S. 12)

General and Revenue Secretariat.

CS File No. 61 of 1912-13

Serial No.

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Dewan

NOTE—Contn. sheet.

GIE- 65,000-17-C-12.

G. R. S. 12]

General and Revenue Secretariat. | C. File No. 61 of 1912

Serial No.	
2	To the Compiler, Mysore Gazette. No. J 1318-21 16-11-12 Notifies that Summonses issued by any Civil or Revenue Court in Br. India or States beyond the limits of Mysore but established or continued by the authority of the Governor General in Council of Br. India in the territories of any foreign Prince or State may be served by the Courts in Mysore
3	Draft to the Residency is submitted for approval. Des 122 SW-(11) 21/11/12 — 21/11
	40 Asst 26/11/12
	B 28/11/12
3	To the Dy. Residency No. 341-21-11-12 encloses a copy of the Notification (Sl. 2)

NOTE—Contn. sheet.

GPB—65,000—17-6-12.

Pol 250 & 16.8.12

DIARY No. 1466

1912-13
No. 4788. Pol
FILE No. 61-12
SERIAL No. 1.

FROM

P. B. WARBURTON, ESQ., I. C. S.,
FIRST ASSISTANT TO THE RESIDENT IN MYSORE.

To

The Dewan of Mysore.

Dated Bangalore, 16th August 1912.

SIR,

I am directed to acknowledge, with thanks, the receipt of Mr. Srinivasaiengar's letter No. 124 Pol., dated the 9th August 1912, regarding the execution of processes and decrees of British Courts by Courts in the Mysore State and to request that a copy of the notification which may be issued by the Durbar under Section 29 may be kindly furnished to this office as early as practicable.

I have the honour to be,

Sir,

Your most obedient servant,

First Assistant Resident.

R. O. 2.—R. P. B.—8-1912.—500.

G. R. S. 26]

cs- File No. 61-12

Serial No. 2

Diary No. of letter replied to

Draft as approved by 1/12 No. 7/10/12

J 1318 & 16-11-12

General and Revenue Secretariat

( )

, *the* 191 .

To

The Registrar

Date of issue

Signed by Mr K. R. Srinivasiengar

Under the provisions of Sec 29 of the Civil Procedure Code, 1911 the Govt of H.H. the Maharaja are pleased to declare that Summonses issued by any Civil or Revenue Court situate in British India or situate beyond the limits of Mysore but established or continued by the Authority of the Governor General in Council

over.

SUBJECT.

3

of British India in the territories of any foreign Prince or State may be served by the Courts in Mysore.

B. O.

Offg Sec'y to Govt.

To

The Compiler, Mysore Gazette for publication with the request that 200 spare copies may be sent to the Judicial & Legislative Branch of the G. & R. S.

List of enclosures,

Copied by

Examined by

GPB—25,000—8-8-11.

GENERAL.

No. J. 1318—*Cts.* 61-12-2, *dated* 16*th November* 1912.

Under the provisions of Section 29 of the Code of Civil Procedure, 1911, the Government of His Highness the Maharaja are pleased to declare that summonses issued by any Civil or Revenue Court situate in British India or situate beyond the limits of Mysore but established or continued by the authority of the Governor-General in Council of British India in the territories of any Foreign Prince or State, may be served by the Courts in Mysore.

By Order,
K. R. SRINIVASIENGAR,
Officiating Secretary to Government,
General and Revenue Departments.

G. R. S. 26]

ale

Cls File No. 61–12.

Serial No. 3

Diary No. of letter replied to

Pol No. 391/11.

General and Revenue Secretariat

( )

, *the* 191 .

To

The First Assistant

to the Hon'ble the

Resident in Mysore

Date of issue 27. 11. 12.

Signed by Mr K. R. Srinivasaiengar

Sir,

Adverting to the

~~last~~ Concluding paragraph of this

Office letter (Political) N 1244 dated

the 9th August 1912, I

am directed to forward

herewith a copy of

Notification N° 1318–Cls

61–12–2 dated 16th Nov

over.

Flag 9c

One + 108 spare copies

SW = 11.

SUBJECT.

1912 issued by the Durbar under section 29 of the Code of Civil Procedure, in the matter of the Service in Mysore of the Summonses issued by Any Civil or Revenue Court Situate ~~in British~~ India beyond the limits of Mysore.

I have, &c.,

S.H.

for Secy to Govt.

Draft
Copy
24/11/12

List of enclosures,

Copied by

Examined by

GPB—25,000—8-8-11.